



TOM HORNE
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

SOLICITOR GENERAL'S OFFICE

Robert L. Ellman
SOLICITOR GENERAL
DIRECT PHONE NO.
602-542-8986

September 23, 2013

Thomas M. Ryan
P.O. Box 6430
Chandler, Arizona 85246-6430

Re: Request for Quo Warranto Action against Carlyle Begay

Dear Mr. Ryan:

I am writing to advise that the Attorney General's Office has concluded its evaluation of your demand to proceed *in quo warranto* against Carlyle Begay based on an allegation that he has usurped the office of Senate LD7. For the reasons set forth below, this Office declines to bring a *quo warranto* action.

I reviewed the materials you submitted along with materials submitted by Ms. Roopali Desai on behalf of Mr. Begay. The facts concerning Mr. Begay's current residence and length of residence are disputed and cannot be resolved without additional investigation or discovery. Moreover, as the submissions reflect, the requirements of the Arizona Constitution and A.R.S. § 41-1202 are ambiguous if not contradictory. Even if the facts related to residency were undisputed, the legal validity of Mr. Begay's appointment to the Arizona Senate would remain unclear without definitive judicial construction of those provisions.

In contrast, the case law clearly indicates that these circumstances do not trigger the Attorney General's duty to proceed *in quo warranto*. The duty exists where *undisputed* facts show *as a matter of law* that a person is unlawfully exercising a franchise. *Sawyer v. Lasota*, 119 Ariz. 253, 256, 580 P.2d 714, 717 (1978) (citing *Duffield v. Ashurst*, 12 Ariz. 360, 364, 100 P. 820, 822 (1909)). Because the present circumstances do not meet these criteria, and because Mr. Hale can bring a private action (*see* A.R.S. § 2043(A); *Sawyer*, 119 Ariz. at 255, 580 P.2d at 716), the Attorney General declines to proceed *in quo warranto* to remove Mr. Begay from office.

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This decision in no way constitutes a judgment regarding the merits of the respective positions asserted by Mr. Hale or Mr. Begay.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rob Ellman".

Robert L. Ellman
Solicitor General

cc: Roopali H. Desai, Coppersmith Schermer & Brockelman PLC
Joseph Young, Apache County Attorney's Office

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